

REMARKS

This is intended as a full and complete response to the Final Office Action dated September 15, 2006, having a shortened statutory period for response set to expire on December 15, 2006. Applicants submit this response to place the application in condition for allowance or in better form for appeal. Please reconsider the claims pending in the application for reasons discussed below.

Claims 3, 7-11, 24, 27, 33 and 44 are pending in the application prior to entry of this response. Claims 33 and 28-47 have been canceled. Claims 3, 7-11, 24 and 27 remain pending following entry of this response. Claim 3 has been amended. Applicants submit that the amendments do not introduce new matter.

Claim Objections

Claim 3 is objected to because of the following informalities. This claim has been amended, as suggested in the Office Action. Accordingly, withdrawal of this objection is requested.

Claim Rejections - 35 U.S.C. § 101

Claim 44 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 44 has been canceled. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Claim Rejections - 35 U.S.C. § 102

Claims 3, 7-11, 24, 27, 33 and 44 are rejected under 35 U.S.C. § 102(e) as being anticipated by *Berezowski et al.* (US 20020056087 A1, hereinafter, "*Berezowski*"). Applicants respectfully traverse this rejection.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

In this case, *Berezowski* fails to teach each and every element as set forth in the claims. For example, *Berezowski* fails to teach transmitting on-screen guide information including a "growth rate of viewers for a particular program" as recited in claims 3 and 27, or a "viewership indicators indicate a viewership growth rate in at least one program" as recited in claim 24.

In responding to Applicants previously submitted arguments that a growth rate is not taught in *Berezowski*, the Examiner submits that both "audience size" and "growth rate of viewers" represent a value or a number of viewers. In responding to Applicants arguments that the claimed growth rate is "a value indicative of a change in a number of viewers", the Examiner points out that this language is not recited in the claims.

Applicants respectfully re-submit, however, that an "*audience size*" does not equate to the claimed growth rate and, further, that the language cited above does not need to be in the claim to distinguish from the reference. First of all, there is no mention in *Berezowski* at all of any type of *growth rate*. Second of all, the assertion that an "*audience size*" equates to the claimed "*growth rate*" is without merit. According to the Princeton University dictionary definition, the definition of *growth rate* is: *the rate of increase in size per unit time* (<http://dictionary.reference.com/browse/growth%20rate>). The growth rate recited in the claims refers to the growth rate for an audience (*thus an increase in size per unit time of an audience*). Nowhere in *Berezowski* is there any discussion of (monitoring, generating and/or transmitting) a change in size of an audience.

Accordingly, Applicants submit claims 3, 24 and 27, as well as their dependents, are allowable and respectfully request withdrawal of this rejection.

Regarding claim 7, Applicants submit that *Berezowski* fails to teach *on-screen interface information (that) comprises transmitting group information identifying group members of the defined group* (of end-user receivers from which viewership data is collected). As described in paragraph [0071], group information may identify group members "by name, initials or other descriptors." While the Examiner refers to portions of *Berezowski* that teach a zip code (as a defined group), the only teachings are that a number of viewers in the zip code watching a particular show may be displayed, however there is absolutely no teaching of any identification of individual members of the group, as recited in the claim.

Accordingly, Applicants submit claim 7, as well as its dependents, are allowable and respectfully request withdrawal of this rejection.

PATENT

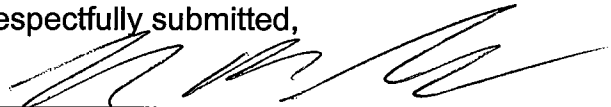
App. Ser. No.: 09/903,350
Atty. Dkt. No. ROC920010125US1
PS Ref. No.: IBMK10125

Conclusion

Having addressed all issues set out in the office action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed.

If the Examiner believes any issues remain that prevent this application from going to issue, the Examiner is strongly encouraged to contact attorney, Randol W. Read, at (713) 623-4844, to discuss strategies for moving prosecution forward toward allowance. Otherwise, it appears an appeal may be the proper course of action.

Respectfully submitted,



Randol W. Read
Registration No. 43,876
PATTERSON & SHERIDAN, L.L.P.
3040 Post Oak Blvd. Suite 1500
Houston, TX 77056
Telephone: (713) 623-4844
Facsimile: (713) 623-4846
Attorney for Applicants